

REMARKS:

The Applicant wishes to thank the Examiner for the courtesy of the personal interview conducted on June 26, 2007. Applicant's statement of the substance of the interview is submitted herewith.

Claims 3, 5, 7, 10, 12, 15 and 18 have been amended by this paper and claims 1, 2, 6, 8, 9, 11, 14, 16 and 17 have been cancelled by this paper. Claims 3, 4, 5, 7, 10, 12, 13, 15 and 18 remain pending in this application.

Applicant notes that the claims have been amended to specify "an ambient air to crabmeat ratio within said flexible pouch of about 13-20% by volume." This ambient air to crabmeat ratio range is significant for pasteurized crabmeat packaged in flexible pouches because ratios below 13% "may increase the possibility for undetected anaerobic bacterial growth," while "ratios above 20% in flexible pouches, even though favorable to aerobic bacterial growth, are susceptible to the inflation problem" that damages the integrity of the flexible pouch. (Application, p. 6, ¶ 20.)

Claims 1-18 are rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. In particular, the Examiner argues that the language "undetected anaerobic bacteria ... is prevented" is indefinite. The claims have been amended to remove the word "undetected" therefrom, thereby obviating the rejections. Accordingly, the rejections of claims 1-18 under § 112 are respectfully traversed.

Claims 1-18 are rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. In particular, the Examiner argues that the use of the word "air" in the claims is indefinite. While Applicant submits that the word "air" is not indefinite (air is simply air), the claims have been amended to specify "ambient air," thereby obviating the rejections. Accordingly, the rejections of claims 1-18 under § 112 are respectfully traversed.

Claims 1-9 are rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. In particular, the Examiner argues that the language "adjusting the volume of air within said packaging vessel to obtain an air to crabmeat ratio such that undetected anaerobic bacterial

growth is prevented” is indefinite because it is not clear whether the air is being flushed out of, or being forced into, the vessel. Applicant notes that ambient air may be flushed out or forced into the flexible pouch depending upon the surrounding conditions and the type of action required to obtain the desired ambient air to crabmeat ratio within the flexible pouch. The word “adjusting” in claim 18 has been replaced with the word “controlling” to further clarify this point. Accordingly, the rejections of claims 1-9 under § 112 are respectfully traversed.

Claims 10-17 are rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. In particular, the Examiner argues that the language “a volume of air within said packaging vessel, said volume of air being adjusted to obtain an air to crabmeat ratio such that undetected anaerobic bacterial growth is prevented” is indefinite because (1) it is not clear what is encompassed by the language “volume of air within said packaging vessel” and (2) it is not clear whether the air is being flushed out of, or being forced into, the vessel. Regarding the first argument, claim 10 has been amended to specify “a volume of ambient air within said flexible pouch.” This simply means that the flexible pouch includes a certain volume of ambient air. Regarding the second argument, Applicant notes that ambient air may be flushed out or forced into the flexible pouch depending upon the surrounding conditions and the type of action required to obtain the desired ambient air to crabmeat ratio within the flexible pouch. Claim 10 has been amended to remove the word “adjusted,” thereby further clarifying that the volume of ambient air within the flexible pouch is a volume of ambient air sufficient to provide an ambient air to crabmeat ratio of about 13-20% by volume. Accordingly, the rejections of claims 10-17 under § 112 are respectfully traversed.

Claim 18 is rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. In particular, the Examiner argues that the language “placing a volume of air into said flexible pouch” is indefinite because it is unclear how the volume of air is being placed into the flexible pouch. Applicant submits that this limitation is not indefinite and any technique for placing ambient air into the flexible pouch may be used, including the use of compressed air, a vacuum process or exposing the flexible pouch to the ambient atmosphere. Accordingly, the rejection of claim 18 under § 112 is respectfully traversed.

Claim 18 is rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. In particular, the Examiner argues that the language “controlling said volume of air placed into said packaging ... is prevented” is indefinite because it is not clear whether the air is being flushed out of, or being forced into, the flexible pouch. Applicant notes that ambient air may be flushed out or forced into the flexible pouch depending upon the surrounding conditions and the type of action required to obtain the desired ambient air to crabmeat ratio within the flexible pouch. The word “controlling” broadly contemplates both situations. Accordingly, the rejection of claim 18 under § 112 is respectfully traversed.

Claims 1-17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,268,189 to Doerter in view of U.S. Patent No. 4,840,805 to Sugisawa et al. The rejections are respectfully traversed.

The Doerter reference discloses a process for packing shellfish, such as crab, in a container. In particular, as shown in Fig. 1, the process includes packing the shellfish in the container, (2) filling the container with a carrageenan/water mixture such that “[t]he mixture fills the container and effectively forces any air from the container, leaving only shellfish and the carrageenan mixture,” col. 3, ll. 8-10, (3) hermetically sealing the container, (4) sterilizing or pasteurizing the container and (5) cooling the container.

The Sugisawa et al. reference discloses a process for packing fish (not crabmeat) in a pouch. In particular, the Sugisawa et al. reference discloses packing dried, broiled fish in a pouch, vacuum sealing the pouch to achieve an air content in the pouch of 25 percent or less and sterilizing the pouch. At col. 3, ll. 9-16, the Sugisawa et al. reference cites (1) improved heat sterilization, (2) preventing the flow of drips and (3) reduced breaking of the fish meat as the reasons for removing air during the vacuum packing process.

Thus, even when combined together, the Doerter and Sugisawa et al. references fail to teach packaging crabmeat with ambient air in a flexible pouch, controlling the amount of ambient air within the flexible pouch to arrive at an ambient air to crabmeat ratio within the flexible pouch of about 13-20% by volume and pasteurizing the resulting package. Nor does the combination of the Doerter and Sugisawa et al. references suggest reducing anaerobic bacterial growth associated with crabmeat packaged in a flexible pouch by maintaining an ambient air to

crabmeat ratio above about 13% by volume, while reducing inflation problems by maintaining the ambient air to crabmeat ratio below about 20% by volume.

Accordingly, it is submitted that the combination of the Doerter and Sugisawa et al. references cannot render obvious the pending claims of the present application. Withdrawal of the rejections of claims 1-17 based upon the Doerter and Sugisawa et al. references is respectfully requested.

Claims 1-17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Pub. No. 2002/0061412 to Ueyama et al. in view of the Sugisawa et al. reference. The rejections are respectfully traversed.

The Ueyama et al. reference discloses a heat-shrinkable multilayer film for packaging, among other things, foods having projections (e.g., crabs), fish meat and other marine products. (P. 5, ¶ 66.) However, the Ueyama et al. reference makes no mention of flexible pouches or preparing a pasteurized packaged crabmeat product, let alone a pasteurized packaged crabmeat product packaged in a flexible pouch and having a controlled ambient air to crabmeat ratio within the flexible pouch for preventing undetected anaerobic bacterial growth within the flexible pouch.

Thus, inasmuch as neither the Ueyama et al. reference nor the Sugisawa et al. reference teaches packaging crabmeat with ambient air in a flexible pouch and controlling the amount of ambient air within the flexible pouch to arrive at an ambient air to crabmeat ratio of about 13-20% by volume, thereby limiting inflation problems and controlling anaerobic bacterial growth, it is submitted that the combination of the Ueyama et al. and Sugisawa et al. references cannot render obvious the pending claims of the present application. Withdrawal of the rejections of claims 1-17 based upon the Ueyama et al. and Sugisawa et al. references is respectfully requested.

Claims 1, 2, 10, 11 and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over GB 2,343,611 to Lett et al. in view of the combination of the Peterson et al. reference, the Air Liquide Canada reference and the Doerter reference. The rejections are respectfully traversed.

The Lett et al. reference discloses packaging crab as follows: (1) optionally wrapping the crab in parchment, (2) placing the crab in a pouch of plastics material, (3) adding brine to the

pouch, (4) vacuum sealing and (5) pasteurizing the sealed pouch. (Lett et al., p. 11.)

Thus, the Lett et al. reference discloses packaging whole crab (not crabmeat) in a brine (not in ambient air).

The Peterson et al. reference discloses containing Dungeness crabmeat in oxygen-impermeable flexible pouches that are heat-pasteurized. After pasteurization, the pouch contents were incubated anaerobically and the endpoints at which spores survived were determined by the presence of toxin in the enrichment medium. The authors determined that pasteurization extends the shelf life of such pouches by inactivating spores of *Clostridium botulinum* nonproteolytic types B, E and F, but not proteolytic strains of *C. botulinum*.

Thus, the Peterson et al. reference acknowledges that certain strains of anaerobic bacteria survive when crabmeat is packaged in a flexible pouch and pasteurized. No solution to the problem is taught or suggested.

The Air Liquide Canada reference discloses packaging “non-salted, smoked, filleted, eviscerated whole fish and fresh sea products” in gas-tight plastic wrapping or bulk plastic trays or containers. The packaging is subjected to a vacuum and then a gaseous atmosphere is introduced to the packaging. The gaseous atmosphere has a CO₂ content of 60-80 percent by volume and an oxygen content of 40-20 percent by volume. The amount of oxygen is such that the development of anaerobic flora, such as *Clostridium botulinum*, is avoided.

Thus, the Air Liquide Canada reference discloses packaging smoked fish and fresh sea products in a modified atmosphere of 60-80% CO₂ and 40-20% oxygen. However, it should be noted that the modified atmosphere increases packaging costs (e.g., a user must purchase food grade CO₂) and provides an unnatural product (e.g., CO₂ readily dissolves in foodstuffs and, in particular, foodstuffs having a high water content, such as crabmeat).

The Air Liquide Canada reference makes no mention of packaging crabmeat in a flexible pouch with ambient air, let alone obtaining an ambient air to crabmeat ratio of 13-20% by volume within the flexible pouch such that anaerobic bacterial growth is inhibited without creating inflation problems.

Accordingly, inasmuch as the combination of the Lett et al., Peterson et al., Air Liquide Canada and Doerter references fails to teach packaging crabmeat with ambient air in a flexible pouch and controlling the amount of ambient air within the flexible pouch to arrive at an ambient

air to crabmeat ratio of about 13-20% by volume, thereby limiting inflation problems and controlling anaerobic bacterial growth, it is submitted that the combination fails to render obvious the pending claims of the present application. Withdrawal of the rejections of claims 1, 2, 10, 11 and 18 based upon the combination of the Lett et al., Peterson et al., Air Liquide Canada and Doerter references is respectfully requested.

Claims 3-9 and 12-17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Lett et al. reference in view of the combination of the Peterson et al. reference, the Air Liquide Canada reference, the Doerter reference and further in view of the Sugisawa et al. reference.

The rejections of claims 3-9 and 12-17 are respectfully traversed for the reasons expressed above with respect to the rejections of claims 1, 2, 10, 11 and 18 based upon the combination of the Lett et al., Peterson et al., Air Liquide Canada and Doerter references.

Claims 1-18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,852,486 to Walker et al. in view of the combination of the Ueyama et al. and Sugisawa et al. references. The rejections are respectfully traversed.

The Walker et al. reference discloses a method for preserving shellfish, such as crab, by (1) partially cooking the crab to remove the meat, (2) dipping the cooked meat into a chlorine solution, (3) impregnating the cooked meat with an aqueous solution of an inorganic chloride (e.g., sodium chloride), an antibacterial agent (e.g., sodium nitrate), and an organic acid (e.g., citric acid), (4) placing the impregnated meat into a container and (5) pasteurizing the impregnated meat.

Thus, the Walker et al. references teaches the use of various unnatural food preservation techniques (e.g., chemical agents such as sodium chloride, sodium nitrate and citric acid) and makes no mention of packaging crabmeat in a flexible pouch with ambient air, let alone packaging crabmeat in a flexible pouch with ambient air to achieve an ambient air to crabmeat ratio of about 13-20% by volume.

Accordingly, for the foregoing reasons and the reasons expressed above with respect to the rejections based upon the combination of the Ueyama et al. and Sugisawa et al. references, it is submitted that the combination of the Walker et al., Doerter and Sugisawa et al. references cannot render obvious the pending claims of the present application. Withdrawal of the

rejections of claims 1-18 based upon the Walker, Doerter and Sugisawa et al. references is respectfully requested.

Claims 1, 10 and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the WO 90/03737 to Bealle. The rejections are respectfully traversed.

The Bealle reference discloses packaging shellfish as follows: (1) placing the shellfish in a sachet of thin film, (2) drawing a high vacuum in the sachet, (3) injecting the sachet with a gas mixture including CO₂ and, optionally, one or more of oxygen, nitrogen and helium to a pressure of 0.1 to 0.5 bar, (4) steam heating the sachet to a temperature of 70 to 130 °C and (5) cooling the sachet to +5 to -40 °C.

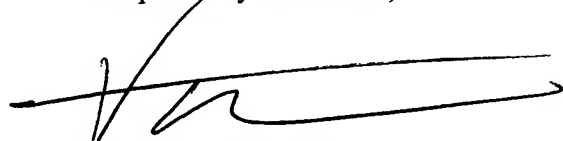
Thus, like the Air Liquide Canada reference, the Bealle reference discloses the use of CO₂ to create a modified atmosphere within the disclosed packaging. Therefore, like the Air Liquide Canada reference, the Bealle reference provides increased packaging costs (e.g., a user must purchase food grade CO₂) and an unnatural product (dissolved CO₂) and makes no mention of packaging crabmeat in a flexible pouch with ambient air, let alone obtaining an ambient air to crabmeat ratio of 13-20% by volume within the flexible pouch such that anaerobic bacterial growth is inhibited without creating inflation problems.

Accordingly, it is submitted that the Bealle reference cannot render obvious the pending claims of the present application and withdrawal of the rejections of claims 1, 10 and 18 is respectfully requested.

For the foregoing reasons, it is submitted that the present application is in condition for allowance and formal notice thereof is respectfully requested.

The Commissioner is hereby authorized to treat any paper that is filed in this application, which requires an extension of time, as incorporating a request for such an extension. 37 C.F.R. § 1.136(a)(3). The Commissioner is further authorized to charge any fees required by this paper or to credit any overpayment to Deposit Account No. 20-0809.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Victor J. Wasylyna', is written over a horizontal line.

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Amendment

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